

Service Date: November 15, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER Of the Application	)	TRANSPORTATION DIVISION
of L & B Busing, Inc., Florence,	)	
Montana for a Class B Montana	)	DOCKET NO. T-9865
Intrastate Certificate of Public	)	
Convenience and Necessity.	)	ORDER NO. 6140b

**FINAL ORDER ON RESERVED ISSUE**

BACKGROUND

1. On May 7, 1992 L&B Busing, Inc. (L&B) filed an application for Class B charter bus authority in Mineral, Lake, Missoula, Granite, Powell, Deer Lodge and Sanders Counties. In Order No. 6140 the Montana Public Service Commission (Commission) granted the application for Missoula and Granite Counties only. (The application was later denied on reconsideration in Order No. 6140a.) L&B presented no evidence of need for the remaining counties, and no meaningful protests were received for those counties.

At Order No. 6140, paragraph 30, the Commission wrote: L&B also applied for authority in Missoula, Mineral, Lake, Granite, Powell, Deer Lodge and Sanders Counties. A need for charter bus service in Missoula and Granite Counties was demonstrated. L&B's application was seriously protested only in Missoula County. The Commission is currently analyzing the presumption of need in unprotested applications, or portions of applications. Therefore, the Commission reserves decision on L&B's application for authority in Mineral, Lake, Powell, Deer Lodge and Sanders Counties for 45 days pending a resolution of that analysis.

#### DISCUSSION

2. The Commission has considered the presumption of need in unprotested areas and concludes that such a presumption is not consistent with the Commission's obligations under Title 69,

Chapter 12, MCA. Some minimal showing of public need must be made by applicants for all areas applied for. Except for Missoula and Granite Counties, no evidence of public need was presented in this Docket. Therefore, the application for authority in Mineral, Lake, Powell, Deer Lodge and Sanders Counties is denied. If L&B thinks it can make a prima facie showing of need it can file another application. The application should contain affidavits of shipper support. The Commission will waive the filing fee for a period of 45 days from the service date of this Order.

ORDER

NOW THEREFORE IT IS ORDERED that the application in Docket No. T-9865 for authority in Mineral, Lake, Powell, Deer Lodge and Sanders Counties is Denied. The application for Missoula and Granite Counties was denied in Order No. 6140a.

Done and Dated this 9th day of November, 1993 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ANDERSON, Chairman

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BOB ROWE, Vice Chairman  
(Voting to Dissent - Attached)

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DAVE FISHER, Commissioner

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NANCY MCCAFFREE, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

**DISSENT OF COMMISSIONER ROWE IN  
DOCKET NO. T-9865**

I dissent from the Commission's order in this docket for a very limited purpose. The application for authority in the counties in question was left open pending the Commission's decision on the degree of scrutiny which would be applied to applications for unprotested counties. An additional question was whether a showing of need would be required for each county.

Because the docket was left open while the Commission clarified its approach, I had suggested the Applicant now be granted thirty days within which to submit affidavits of shipper support for the additional counties, Mineral, Lake Powell, Deer Lodge, and Sanders. The Commission majority believed it would be procedurally cleaner to close the docket, while waiving the filing fee for a new application filed within forty-five days. That approach is consistent in spirit with my recommendation.

The Commission has not been able to resolve the difficult question of how much need must be demonstrated for state-wide or multi-county authority. Applicants should demonstrate that they will in fact provide service to the entire area requested, that they are not seeking additional counties as an afterthought, or attempting to "tie up" authority. This argues for scrutiny of an

applicant's willingness and ability to serve areas, whether those areas are counties or multi-county regions.

Requiring a demonstration of need for each county, however, risks denying applications for more rural counties only because the application was not supported by an affidavit or witness for that specific county. This argues for a regional approach, which may not necessarily be quantified. Together, the two concerns must be balanced to assure that rural areas receive the high-quality service to which they are entitled.

RESPECTFULLY SUBMITTED this ninth day of November, 1993

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Bob Rowe  
Vice Chair